

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

FILE NUMBER

ARMIN WAND, III,

NOTICE OF APPEAL

Plaintiff,

vs.

BECKY KRAMER, et al.,

Defendants.

Notice is hereby given that Armin Wand, III, pro se, Plaintiff in the above named case, hereby appeal to the United States Court of Appeals for the Seventh Circuit from an Order <sup>granting</sup> Defendant Patterson's Motion for Summary Judgment on exhaustion grounds, 2. Denying Plaintiff's Motion for relief from final judgment, 3. Judicial error entered in this action on June 2, 2020.

Dated this 27<sup>th</sup> day of June, 2020.

Respectfully Submitted,

Armin Wand, III

Armin Wand, III #380173

Pro se

W.S.P.F. - P.O. Box 1000

Boscobel, WI 53805

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

ARMIN WAND II,

Plaintiff,

Vs.

Case No. 18cv500wmc

BECKY KRAMER, et al.,

Defendants.

AFFIDAVIT OF ARMIN WAND II

STATE OF WISCONSIN

ss.

COUNTY OF GRANT

Armin Wand II, being first duly sworn  
to under oath, deposes as follows:

1. I am the plaintiff in the above-captioned  
case.

2. I am currently incarcerated at Wisconsin  
Secure Program Facility ("W.S.P.F."),

3. On April 17, 2019, Wand was granted leave  
to proceed on the claims that the defendants violated

his rights under the Eighth Amendment and state law by delaying or failing to provide adequate medical care for his appendicitis, ruptured appendix, and subsequent complications, and for cancelling his follow up appointment and failing to reschedule them. (¶kt. 16).

4. On January 16, 2020, Patterson filed a Motion for Summary Judgment on Exhaustion grounds. (¶kt. 102).

5. On June 2, 2020, this court Granted Patterson's Motion for Summary judgment on Exhaustion grounds.

6. If a plaintiff improperly includes in his §1983 action a claim challenging the fact or duration of confinement, the district court should dismiss the claim without prejudice. The dismissal is required to be without prejudice so that the plaintiff may reassert his claims should he later succeed in invalidating his claims. Sheldon v. Hundley, 83 F.3d 231, 233 (8<sup>th</sup> Cir. 1996); Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9<sup>th</sup> Cir. 1995).

7. In the same order on June 2, 2020,  
"However, Ward's failure to include any allegations suggesting that he had a problem with how WSPP staff handled his treatment once he returned from the

the hospital does preclude his proceedings on that claim in this lawsuit, including against Patterson".

8. Ward raised claims against Patterson, McArdle, and Waterman for how they mishandled his treatment after Ward returned to W.S.P.F.

9. Ordinarily in civil litigation, a statutory time limitation is forfeited if not raised in defendant's answer or in an amendment thereto, and a district court's decision to override a defendant's deliberate waiver of a limitations defense would be an abuse of discretion.

10. If the state intelligently chooses to waive a limitations defense, a district court is not permitted to disregard that choice. Day v. McDonough, 541 U.S. 198, 210 n. 11, 1265 ct. 1675, 164 L. Ed. 2d 376 (2006).

11. A statute of limitations defense is not jurisdictional hence courts are under no obligation to raise the timebar sua sponte.

12. On December 10, 2019, the court

granted McArdle's motion for summary judgment and Wand's claim against McArdle are dismissed without prejudice. (dkt. no. 75).

13. If a plaintiff improperly includes in his § 1983 action a claim challenging the fact or duration of confinement, this district court should dismiss the claim without prejudice. This dismissal is required to be without prejudice so that the plaintiff may assert his claims should he later succeed in invalidating his claims.

Sheldon v. Huddley, 83 F.3d 231, 233 (8<sup>th</sup> Cir. 1996); Trimble v. Santa Rosa, 49 F.3d 583, 586 (9<sup>th</sup> Cir. 1995).

14. On April 8, 2020, Wand filed a inmate [REDACTED] complaint regarding how McArdle handled the removal of my staples before my follow-up appointment.

15. On April 10, 2020, Wand's complaint was acknowledged;

16. On April 10, 2020, it was recommended that my complaint be dismissed. J. Payne The ICE misinterpreted my complaint as challenging the courts decision.

17. On April 10, 2020, Gary Boughton decision

to dismiss my inmate complaint.

18. On April 19, 2020, I appealed the dismissal of the inmate complaint.

19. On April 22, 2020, ICE acknowledged receiving my inmate complaint.

20. On April 22, 2020, corrections complaint examiners recommendation was to dismiss my appeal based on the misinterpretation that I was challenging the courts decision.

21. On April 21, 2020, from the office of the secretary ~~the~~ the decision was to dismiss my appeal.

22. On April 29, 2020, I filed a Motion for Relief from the judgment of dismissal (clkt. no. 132).

23. Rule allowing Relief from final judgment does allow relief from final judgment on account of mistake, and, rule may be invoked for correction of judicial error, but only to rectify obvious error of law, apparent on the record, and thus it may be employed when judgment obviously

Conflicts ~~with~~ With clear statutory  
Mandate or When judicial error involves  
fundamental misconception of law. Fed. R. Civ. P.  
60(b). HILL V. McDERRIMOTT INC., 827 F. 2d  
1040 U.S. APP (5<sup>th</sup> Cir. 1987).

24. On June 2, 2020, the court denied  
my motion for relief from judgment, based on the  
was over two years ago.

25. I am a layman not skilled in the  
law. Unlike attorneys who went through four  
years of law school, passed the bar exam. I did  
not. It took me over two years to exhaust the  
administrative remedies; because it took me  
that long to learn i have to exhaust on each party  
and issue. There is still a lot that I do not know  
about.

26. A person that deprives prisoners  
of basic sustenance, including adequate medical  
care, is incompatible with the concept of  
human dignity and has no place in civilized society,

27. If government fails to fulfill  
its obligation to provide basic sustenance  
to prisoners the courts have a responsibility  
to remedy the resulting Eighth Amendment violation.

27. While courts must be sensitive to the state's interest in punishment, deference, and rehabilitation, as well as the need for deference to experienced and expertise prison administrators faced with difficult and dangerous task of housing large numbers of convicted criminals, courts nevertheless must not shrink from their obligations to enforce the constitutional rights of all persons, including prisoners, and courts may not allow constitutional violations to continue simply because a remedy would involve intrusion in to the realm of prison administration.

28. I submit this affidavit in support of my appeal and requesting the court allow me to proceed without prepaying of fees and/or cost.

Dated this 29<sup>th</sup> day of June

Armin Wand III

Armin Wand III

Subscribed and sworn to before me  
this 29<sup>th</sup> day of June 2020

Travis Hudson

Notary Public, State of Wisconsin  
My Commission expire 8/13/2021

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN  
CERTIFICATE OF SERVICE

Case Name: ARMIN WAND, III V. BECKY KRAMER,  
et al.,  
Case No. 18-CV-500-WMC

I hereby certify that on June 29, 2020 I placed the following documents in the institutions Mail box to be electronically filed with the United States District Court for the Western District of Wisconsin by using the CM/ECF system:

- NOTICE OF APPEAL
- AFFIDAVIT OF ARMIN WAND, III
- PETITION AND AFFIDAVIT TO PROCEED WITHOUT PREPAYMENT OF FEES AND / OR COST
- INMATE TRUST ACCOUNT FOR THE PAST 6 MONTHS

Armin Wand, III  
Armin Wand, III